

STATEMENT OF FACTS

Your affiant, Kelsey Randall, is a Special Agent with the Federal Bureau of Investigation (FBI). I am assigned to the FBI Joint Terrorism Task Force. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Federal law enforcement officer, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the U.S. Congress convened at the U.S. Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the U.S. House of Representatives and the U.S. Senate were meeting in separate chambers of the U.S. Capitol to certify the vote count of the Electoral College of the 2020 Presidential Elections, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m., members of the U.S. House of Representatives and the U.S. Senate, including the President of the Senate, Vice President Mike Pence, were instructed to-and did-evacuate the chambers. Accordingly, the joint session of the U.S. Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

Following the events on January 6, 2021, the FBI received a tip from an individual who reported that Erik Herrera (HERRERA) was involved in the events at the U.S. Capitol on

January 6, 2021. The individual submitted a screen capture of Instagram user “duvalinpapi,” who posted a photograph of somebody holding papers inside an office within the U.S. Capitol. The caption of the post read, “I’m reclaiming Aztlan because I love America. Querer es poder! #washingtondc #washington #chicanohistory #mexicanamerican”. Based on additional information discussed below (including HERRERA’s admission), it was established that the Instagram post was a picture of HERRERA in the U.S. Capitol.



On March 19, 2021, a federal search warrant was served on Facebook authorizing the search of Instagram account “duvalinpapi”. Instagram records show the subscriber of Instagram account “duvalinpapi” has a first name of Erik, a registered email address of [erik.herrera@\[REDACTED\]](mailto:erik.herrera@[REDACTED]), and telephone number of ending in -1168.¹ The profile bio for the “duvalinpapi” account includes a link to HERRERA’s website (erikherreraphoto.com). Additionally, the data provided by Facebook included a direct message conversation that occurred on January 7, 2021 between HERRERA and Instagram user 255412652. In that conversation, HERRERA stated that he was in Washington, D.C. “for both photojournalism and our people.”

In additional messages sent by HERRERA on Facebook, he indicates his dissatisfaction with the results of the election:

¹ Facebook provided the full email address and the full phone number; however, due to the public nature of the filing, the information included herein has been partially redacted.

Sent 2021-01-07 01:00:41 UTC

Body Could you elaborate on what you mean by you did what you had to do for our people?

Obviously news coverage can be biased depending on its source, but you are there, you're in it.

Whatever was planned and executed for today, I'd like to understand what the mission was and the desired outcome?

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-09 02:39:12 UTC

Body The first part I'll answer at another time.

It was driven by the election results but also everything else that has been affecting the country for almost a year.

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-07 17:42:46 UTC

Body It's about the people

Author [REDACTED] (Instagram: 379031014)

Sent 2021-01-07 17:44:33 UTC

Body Do you think Trump won the election?

Author [REDACTED] (Instagram: 379031014)

Sent 2021-01-07 17:45:08 UTC

Body Why were "the people" there? What was their goal?

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-07 17:46:25 UTC

Body I don't think we had an honest electoral process in 2020.

People are fed up. Also if the us government is inherently white supremacist what was the issue with yesterday?

Author [REDACTED] (Instagram: 255412652)

Sent 2021-01-07 00:29:01 UTC

Body I have been at the hospital all day and when people stopped in the reception area to watch what was happening on the news... I too found myself captivated by what was being demonstrated. I remember you telling me you were heading to DC to cover some shit but I don't want to assume anything further. So, to clear any confusion... are you there to provide journalism coverage or is there a different reason that I'm not fully aware of?

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-07 00:40:34 UTC

Body I did what I had to do for both photojournalism and our people.

On January 9, 2021, HERRERA and Instagram user 255412652 continued their conversation. Instagram user 255412652 asked, "What was going through your mind when you entered the capitol?" and HERRERA responded "I can't believe this is fuckn happening".

Author [REDACTED] (Instagram: 255412652)

Sent 2021-01-09 08:51:23 UTC

Body Would you surmise that the majority of the people there felt that they had nothing left to lose?

What was going through your mind when you entered the capitol?

What did wearing your Press pass provide you?

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-09 08:56:15 UTC

Body Yes. You could see the desperation in the faces. It's fair to say that they felt like that. Many conservative journalists don't know what to make of it

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-09 08:57:10 UTC

Body "I can't believe this is fuckn happening" "what the fuck!"
Holyshitholyshitholyshit"

Additionally, Instagram user 255412652 asked, "What was going through your mind while holding what appeared to be a stack of government documents?" to which "duvalinpapi" responded, "I wasn't thinking much, I just wanted a goofy 'fuck you' picture."

Author [REDACTED] (Instagram: 255412652)

Sent 2021-01-09 09:16:24 UTC

Body I can only imagine how awful it must be for people to. Not only lose their livelihood, but also their health insurance, maybe a loved one, hopes, dreams.... Then to see no end in sight from the most "powerful" nation in the world but still feel like a caged animal. Those kinds of circumstances change people when it happens on a long enough time line.

What was going through your mind while holding what appeared to be a stack of government documents?

I don't suppose the Proud Boys were the only group rallying together at the capitol that day, but what do you feel draws people to groups like this?

Author [REDACTED] (Instagram: 255412652)

Sent 2021-01-09 09:17:45 UTC

Body What kind of feedback have you been receiving from your most recent posts?

Author duvalinpapi (Instagram: 20251440)

Sent 2021-01-09 09:25:12 UTC

Body I wasn't thinking much, I just wanted a goofy "fuck you" picture. I don't even know what they were. Probably can't talk about that here anymore, the post was flagged.

FBI Agents reviewed video surveillance from the U.S. Capitol building from January 6, 2021. Based on the Instagram screen capture provided by the tipster, Agents were able to identify HERRERA captured on multiple cameras inside the U.S. Capitol Building.



HERRERA is a photographer, but I have found no evidence that he is the member of the news media or that he has published his photographs in any news outlet. I am aware that Instagram user 255412652 asked “What did wearing your Press pass provide you?” Apparently, this comment referred to a “press” patch that HERRERA was wearing on his body armor while in the U.S. Capitol. In my experience, a press credential is not a patch. In any event, HERRERA admitted that he was in Washington, D.C. for reasons other than photojournalism.

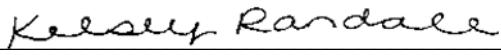
Although HERRERA self-identifies as a photographer and posts photos to his Instagram feed and website, the government has found no instance where a photo taken by HERRERA has

been published to any other news outlet. On January 7, 2021, HERRERA admitted on social media that the press patch he used on January 6 had not been issued by a good faith media organization when he posted, “I don’t have a monopoly on press badges. They’re on Amazon for like \$8 … No special permission to buy.”

Based on the foregoing, your affiant submits that there is probable cause to believe that HERRERA violated 18 U.S.C. §§ 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes for Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that HERRERA violated 40 U.S.C. §§ 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in the building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Your affiant submits there is also probable cause to believe that HERRERA violated 18 U.S.C. § 1512(c)(2), which makes it a crime to corruptly obstruct, influence, or impede an official proceeding, and to attempt to do so. A proceeding before Congress is an “official proceeding” for purposes of 18 U.S.C. § 1512(c)(2) as defined in 18 U.S.C. § 1515(a)(1)(B).



KELSEY RANDALL
Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 6th day of August, 2021.

G. Michael Harvey, U.S. Magistrate Judge